ORIGINAL

LAW OFFICES
KOTEEN & NAFTALIN, L.L.P.
1150 CONNECTICUT AVENUE
WASHINGTON, D.C. 20036

TELEPHONE
(202) 467-5700
TELECOPY
(202) 467-5915

BERNARD KOTEEN*
ALAN Y. NAFTALIN
ARTHUR B. GOODKIND
GEORGE Y. WHEELER
MARGOT SMILEY HUMPHREY
PETER M. CONNOLLY
CHARLES R. NAFTALIN
GREGORY C. STAPLE
R. EDWARD PRICE

* SENIOR COUNSEL

August 21, 1997

Mr. William F. Caton
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

Re: IB Docket No. 96-111 et al.

Dear Mr. Caton:

Transmitted herewith, on behalf of TMI Communications and Company, Limited Partnership (TMI) are an original and nine copies of TMI's "Supplemental Comments" in the above-captioned docket.

Any questions regarding the above should be directed to the undersigned.

Sincerely yours,

Gregory C. Staple

No. of Copies rec'd 0+9
List ABCDE

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Amendment of the Commission's Regulatory Policies to Allow Non-U.S.-Licensed Space Stations to Provide Domestic and International Satellite Service in the United States and	)	IB Docket No. 96-111
	)	
Amendment of Section 25.131 of the Commission's Rules and Regulations to Eliminate and Licensing Requirement for Certain International Receive-Only Earth Stations and	)	CC Docket No. 93-23 RM-7931
	)	
COMMUNICATIONS SATELLITE CORPORATION Request for Waiver of Section 25.131(j)(1) of the Commission's Rules As It Applies to Services Provided via the Intelsat K Satellite	)	File No. ISP-92-007

SUPPLEMENTAL COMMENTS OF TMI COMMUNICATIONS AND COMPANY, LIMITED PARTNERSHIP

By its attorneys:

Gregory C. Staple
Koteen & Naftalin, L.L.P.
1150 Connecticut Avenue, N.W.
Suite 1000
Washington, D.C. 20036
Tel: (202) 467-5700

August 21, 1997

Table of Contents

SUMMARY

TMI Communications and Company, Limited Partnership (TMI), the Canadian-licensed regional mobile satellite service (MSS) operator, supports the revised market entry policy for non-U.S.-licensed satellites advanced in the DISCO II Further Notice. However, to ensure that the newly proposed market entry rules actually expedite competition between MSS systems licensed in the U.S. and Canada, certain clarifications and/or modifications of the agency's proposals are required.

First, the FCC should confirm that, upon adoption of its new rules, U.S. earth station access to regional as well as global MSS systems licensed in WTO countries will be presumed to be in the public interest. Thus, any party opposing U.S. access to the TMI system must show that access would pose a very high risk to competition in the United States MSS market -- a showing which would be extremely difficult to make, in our view, given that the MSS market in the U.S. is now served almost exclusively by the AMSC Subsidiary Corporation (AMSC).

Second, consistent with its support for the existing international coordination process for satellite services, the FCC should announce a further presumption regarding the relevance of spectrum issues to market access by non-U.S. satellites. Specifically, the FCC should presume that no spectrum considerations need to be reviewed in connection with a request to access a non-U.S. MSS system which has completed the international coordination process.

Third, the FCC should clarify the additional Part 25 requirements, if any, which would apply to TMI service in the U.S. because the DISCO II Further Notice is unclear on this matter as regards regional MSS systems.

Fourth, the FCC should not extend the scope of Section 25.143(h) of the rules by banning so-called "exclusionary arrangements" by non-U.S. satellites seeking to serve the U.S. Application of such a rule is particularly inappropriate for MSS systems given that these systems have only recently been exempted from the agency's international settlement policy (ISP). Adoption of such a rule would also violate the U.S. commitments under the General Agreement on Trade and Services (GATS) because U.S. satellite operators, such as AMSC, would not be subject to the same rules. For these and other reasons, the FCC should address any anti-competitive impacts which may arise from the foreign service arrangements of non-U.S. satellites on a case-by-case basis.

Finally, the FCC should deregulate the use of receive-only mobile earth stations which receive "covered" services from non-U.S. MSS systems licensed by a WTO member country. Continued licensing of such terminals is anti-competitive and also would violate the GATS. Section 25.131(j) of the Rules should be amended accordingly.

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Amendment of the Commission's Regulatory Policies to Allow Non-U.S.-Licensed Space Stations to Provide Domestic and International Satellite Service in the United States and	)	IB Docket No. 96-111
	)	
Amendment of Section 25.131 of the Commission's Rules and Regulations to Eliminate and Licensing Requirement for Certain International Receive-Only Earth Stations and	)	CC Docket No. 93-23 RM-7931
	)	
COMMUNICATIONS SATELLITE CORPORATION Request for Waiver of Section 25.131(j)(1) of the Commission's Rules As It Applies to Services Provided via the Intelsat K Satellite	)	File No. ISP-92-007

SUPPLEMENTAL COMMENTS OF
TMI COMMUNICATIONS AND COMPANY, LIMITED PARTNERSHIP

These supplemental comments are filed on behalf of TMI Communications and Company, Limited Partnership (TMI), a Canadian licensed Mobile Satellite Service (MSS) operator which provides service in the L-band (1.5-1.6 GHz) using a geostationary satellite (MSAT-1) located at 106.5° W.L.[1]

[1] The TMI satellite also provides back-up service for the AMSC Subsidiary Corporation (AMSC) mobile satellite (AMSC-1), located at 101° W.L., which has a similar North American service footprint.

I. The Public Interest In U.S. Earth Station Access To Non-U.S. Mobile Satellites From WTO Countries Should Be Presumed, As The FCC Now Proposes

The DISCO II Further Notice[2] in this docket provides, in many respects, a welcome and constructive new approach to liberalizing the market for satellite services based upon the February 1997 World Trade Organization (WTO) agreement on basic telecom services.[3] TMI accordingly supports the FCC's principal new proposal -- that is, the U.S. provision of "covered" (i.e., non-broadcast) services by non-U.S. satellites licensed by WTO countries will be presumed to be in the public interest. Consequently, for such services and such satellites, relevant applications will: (a) not be subject to an Effective Competitive Opportunities (ECO) test, as originally proposed;[4] and (b) be "grant[ed] ... on a streamlined basis provided they otherwise comply with Commission rules and policies."[5] However, to reduce future regulatory delays, and provide U.S. satellite users with greater certainty, TMI believes that some parts of the FCC's proposed regime require clarification. In addition, certain portions of the FCC's new regime should be reconsidered as

---

[2] Amendment of the Commission's Regulatory Policies to Allow Non-U.S. Licensed Space Stations to Provide Domestic And International Satellite Service in the United States, IB Docket No. 96-111, Further Notice of Proposed Rulemaking (rel. July 18, 1997) (DISCO II Further Notice).

[3] The WTO telecoms agreement is not a single document. It consists of certain general principles contained in two umbrella treaties -- the General Agreement on Trade in Services (GATS), and the Agreement Establishing the World Trade Organization. See 33 I.L.M. 1167 (1995). It also comprises the specific Schedules of Commitments for liberalizing telecom services under the GATS. The Schedules tendered by Canada, the U.S. and approximately sixty other WTO members can be found at the WTO World Wide Web site, www.wto.org/wto/new/gbtoff.htm.

[4] See Notice of Proposed Rule Making, 11 FCC Rcd 18178, ¶¶ 1, 18 (1996) (DISCO II Notice).

[5] DISCO II Further Notice ¶ 13.

they appear to be at odds with the United States' new WTO obligations, and are otherwise either unnecessary or irrelevant for the unique MSS offerings of TMI.

A. The FCC Should Confirm That The Public Interest Presumption Will Apply To U.S. Earth Stations Communicating With Regional MSS Systems Licensed By Canada And Other WTO Countries

Although the proposals in the DISCO II Further Notice appear to apply to "covered services"[6] provided by non-U.S. operators of systems in the Fixed Satellite Services (FSS) and the Mobile Satellite Service (MSS) -- whether providing global or regional mobile services -- the DISCO II Further Notice does not expressly address this issue. Instead, the Further Notice seems to lump all MSS systems together, as did the DISCO II Notice, even though the original Notice acknowledged that MSS systems raised different competitive issues from FSS systems.

In these circumstances, to avoid future controversy, TMI suggests that the FCC's final order expressly state that it will process U.S. earth station applications seeking to access all non-U.S. MSS system licensed by a WTO country, including regional MSS systems such as TMI,[7] on a streamlined basis, and will not apply an ECO-Sat test. Rather, any opposing party will be required to show that grant would pose a very high risk to competition in the United States MSS

---

[6] The DISCO II Further Notice distinguishes between satellite services covered by the U.S. Schedule of Commitments and services for which the Schedule provides an exemption. These exempt or "non-covered services" are "direct-to-home Fixed-Satellite Service (DTH-FSS), Direct Broadcast Satellite Service (DBS) and Digital Audio Radio Service (DARS)." DISCO II Further Notice at ¶ 20. See also U.S. Schedule of Commitments, S/GBT/w/l/Add.2/Rev. 1, 12 February 1997, at 1. It is our understanding that any telecommunications service which is not subject to an express exception in a Member's Schedule is covered by the GATS.

[7] Canada is a WTO member, of course, and as a Canadian-licensed satellite system, TMI would clearly qualify for such treatment. See supra note 3.

market that could not be cured by placing general (i.e., non-discriminatory) conditions on the license.

For the reasons stated below, however, because the TMI satellite is already in orbit; has completed the international coordination process; and has been harmonized with AMSC's operation since the two systems were planned in the mid 1980s -- the burden should be on the opposing party to show, with particularity, the public interest rationale for any such general conditions.[8]

B. The FCC Also Should Presume That No Spectrum Issues Need To Be Reviewed For Access To Non-U.S. Mobile Satellites Which Have Completed The International Coordination Process

The DISCO II Further Notice states that the FCC will maintain its current earth station and satellite license application processes for services provided by non-U.S. satellites from WTO countries, even though no ECO-Sat test will be applied. Thus, the "Commission may condition or deny authorizations to provide satellite services based on other important public interest factors."[9] These factors apparently include spectrum management considerations. For example, the FCC states that "in a service for which U.S. satellites have already been licensed, we would

---

[8] We are unaware of any rationale for placing general conditions on TMI's provision of service to U.S. earth stations via MSAT-1. Moreover, because any such conditions might affect TMI's services in Canada, and hence constitute a de facto modification of the company's existing satellite license, the rationale therefor would also need to be demonstrated under Canadian law. TMI does not object, in principle, if U.S. earth stations licensed to access TMI are subject to the general technical conditions in Part 25, provided they are applied in a non-discriminatory fashion and do not create a de facto barrier to TMI's market access. See also the discussion at Section I.C. infra.

[9] DISCO II Further Notice ¶ 37.

not expect to authorize a non-U.S. licensed satellite to serve the United States if grant would create debilitating interference problems or where the only technical solution would require the licensed system to significantly alter their operations."[10]

It follows, though, that where the provision of service by a non-U.S. licensed satellite would not cause "debilitating interference" -- e.g., because the satellite already has been coordinated with the U.S. system(s) -- the service would be authorized. It also follows that if no U.S. spectrum is requested by a non-U.S. satellite, the FCC's post WTO agreement concerns regarding spectrum will be limited to interference considerations.

This approach -- which TMI supports -- is also evidenced by the FCC's subsequent discussion of how its general rules will be applied to non-U.S. satellites which are already in orbit. For example, the DISCO II Further Notice states that non-U.S. parties seeking to participate in future satellite processing rounds must generally provide the technical and financial information required by Section 25.114 of the Rules.[11] The Commission, however, will "not require foreign applicants ... to provide technical information when the international coordination process for the non-U.S. satellites has been completed."[12] The plain inference is that in such cases, there are no longer any relevant interference issues -- i.e., existing U.S. satellites will not

---

[10] Id. ¶ 38.

[11] Id. ¶ 53, n. 44.

[12] Id. See also FCC Public Notice, DA 97-1723, Report No. SPB-95, August 13, 1997, at 2, the amended 2 GHz MSS cut-off notice, exempting non-U.S. satellite systems from submitting the technical information specified in Section 25.114(c)(5) to 25.114(c)(l2) where the systems have already completed international coordination and the technical characteristics of the system remain unchanged.

be subject to interference if the previously coordinated non-U.S. satellite is permitted to serve the U.S.

In view of the foregoing, TMI submits that the Commission can avoid significant delay in processing later earth station applications for access to non-U.S. satellites if it expressly adopts a further public interest presumption in this docket. Specifically, where a non-U.S. "WTO satellite" has completed the international coordination process, and no new U.S. spectrum is requested, the FCC should presume that no relevant spectrum considerations exist, and the public interest would be served by grant of the application. By way of example, and to expedite additional competition in the regional MSS market, the agency also should expressly find that access to the existing TMI satellite by U.S. earth station users would not raise any interference considerations, and is presumptively in the public interest.[13]

By so doing the FCC would provide MSS customers with a greater sense of certainty that,

---

[13] Prior submissions by TMI in this docket, and other FCC dockets, of which the agency may take public notice, provide a record basis for such a finding. As detailed in TMI's "Reply" comments, dated August 16, 1996, at 5-6, the L-band (1.5/1.6 GHz) spectrum necessary for the TMI and AMSC systems to provide reasonably equivalent North American service has already been coordinated. See "FCC Hails Historic Agreement On International Satellite Coordination," FCC Public Notice, Report No. IN 96-16, June 25, 1996.

The ability of TMI and AMSC to use coordinated L-Band spectrum to compete in each other's home markets need not prejudice the future coordination of adequate spectrum for either satellite system. Competition per se is likely to have a limited impact on the overall size of the regional MSS market. In any event, the FCC need not address these issues here. They will be reviewed again in the next round of multilateral spectrum coordination meetings for L-Band MSS and in the Upper and Lower L-Band proceeding referenced above.

TMI only seeks to establish a limited presumption here -- that TMI service to the U.S. will not raise any interference issues. It is TMI's view, however, that this is the only legitimate post WTO agreement spectrum concern that the FCC has where a non-U.S. satellite does not seek to use any additional U.S. spectrum.

come January 1998, when the WTO agreement and the FCC's new rules are expected to become effective, they will actually have alternative service options. Before committing to a non-U.S. satellite operator, a U.S. business deserves to be assured that the FCC's proposed policy means what it says, and that any party opposing entry by TMI or another regional MSS system will not be permitted to block or delay their business plans.

C. TMI's Existing In-Orbit Satellite Should Be Permitted To Serve The U.S. Without Being Subject To Additional Service Or Financial Requirements Stated In Part 25 Of The Rules

Citing the need to avoid interference with U.S.-licensed satellite operators, the DISCO II Further Notice proposes that non-U.S. systems be required to meet "all technical and service rules contained in Part 25 ... of the Commissions rules." The examples given by the Commission, however, concern the general service conditions in Part 25, rather than interference provisions. For instance, the FCC states that non-U.S. FSS operators seeking to serve the U.S. will be required to comply with the agency's 2° spacing rules. Likewise, the agency states that non-U.S. "Big LEO" systems must be capable of providing service throughout the U.S. at all times as required by Section 25.143(b)(2)(iii) of the Rules.

The DISCO II Further Notice does not specify which service provisions of Part 25, if any, would be relevant for a regional MSS system, such as TMI's. In contrast to the "Big LEO" service, Part 25 does not contain any specific service rules for 1.5/1.6 GHz L-band MSS operators such as AMSC and TMI.[14] Thus, apart from certain technical provisions of Part 25 (Subparts C

---

[14] AMSC's license requires it to serve all of the U.S. though, and the TMI satellite, which was designed to provide back-up service, has a reasonably equivalent U.S. service footprint. Background on the joint development of the TMI and AMSC systems, and a description

and D), Part 25 is essentially irrelevant for TMI, and would not place any particular service obligations upon it, were it to offer service to U.S. earth stations. To avoid any uncertainty on this point, TMI requests the foregoing reading of Part 25 be confirmed.[15]

Similarly, given that the TMI satellite has already been constructed and placed in orbit, TMI assumes that, per the discussion at Paragraph 60, note 50 in the DISCO II Further Notice, the financial information which Part 25 requires from satellite applicants would be inapplicable. The FCC's final order in this docket should confirm this too.

D. The Anti-Competitive Impact, If Any, Of Foreign Exclusionary Arrangements Made By Non-U.S. Satellite Operators, If Any, Should Be Reviewed On A Case-By-Case Basis, And No General Rule Should Be Adopted

TMI opposes the FCC's proposal to grant authority to a non-U.S. satellite to serve the U.S. on "condition[] that the satellite not provid[e] service between the United States and any country with which such satellite has entered into an exclusionary arrangement."[16] Although the FCC asserts that this ban on "exclusionary" arrangements is designed to "foster innovation and

---

of their service footprints, can be found at pp. 10-12 of TMI's initial Comments.

[15] TMI would not object to complying with Subparts C and D of Part 25 to the extent relevant to services which might be provided to U.S. earth stations by its existing M-Sat 1 satellite. See also supra note 8.

[16] DISCO II Further Notice ¶ 42. TMI, therefore, also opposes the FCC's broader condition (advanced at ¶ 43) which would bar a non-U.S. satellite operator from a WTO country from serving the U.S. market altogether so long as it maintains an exclusionary arrangement with any foreign country. This condition would plainly negate the United States' WTO schedule of market opening commitments, and amount to an impermissible entry restraint, violating the Most-Favored Nation (MFN) and National Treatment provisions of the GATS. See GATS, Articles II and XVII.

maximiz[e] competition,"[17] this claim is largely unsupported. In any event, the proposed ban is unworkable and would impose an unfair burden on earth station users in the U.S.[18] The FCC's proposal is also at odds with the agency's recent decision not to apply its International Settlement Policy (ISP) to international MSS offerings.[19]

As a preliminary matter, the FCC's proposed condition is unreasonably vague. The term "exclusionary arrangement" is not defined in the DISCO II Further Notice or in Section 25.143(h) of the Rules, to which the FCC refers.[20] Yet, the latter provision, by its terms, bars any exclusive arrangement, even if does not adversely affect market access for a competitor -- e.g., an arrangement could be considered exclusionary under Section 25.143(h) merely because it affords one Big LEO a preferential pricing arrangement for landing U.S. traffic at a foreign point, even though there are multiple carriers able to terminate U.S. international traffic at that location. As written, therefore, the FCC's proposed rule does not provide non-U.S. satellite operators with adequate guidance on the type of arrangement which would be barred and, to the extent it relies

---

[17] DISCO II Further Notice ¶ 41.

[18] Access to non-U.S. satellites will, in most cases, be triggered by a user request (i.e., an earth station application). Such users typically will have no direct relationship with the non-U.S. satellite operator, and thus will have no knowledge of the operator's non-U.S. business practices, especially outside the U.S. It would be quite unrealistic, therefore, to expect such applicants to determine whether the non-U.S. operator has an "exclusionary" arrangement with one or more of the tens of foreign countries which they may serve.

[19] See Regulation of International Accounting Rates, CC Docket No. 90-337, Phase II, Fourth Report and Order, FCC 96-459 (rel. December 3, 1996) (Flexibility Order), ¶ 73.

[20] Section 25.143(h) bars any Big LEO from receiving a license if it, or a controlling entity, acquires "any right, for the purpose of handling traffic to or from the United States ... to construct or operate space segment or earth stations ... which is denied to any other United States company by reason of any concession, contract, undertaking or working arrangement ...." 47 C.F.R. § 25.143(h) (emphasis added).

upon Section 25.143(j), is overbroad and anti-competitive.

For example, in the agency's related Foreign Participation proceeding, IB Docket No. 97-142, the FCC recognized that rules, such as Section 25.143(j), may unreasonably restrain the competitive options of international service providers. especially between carriers from WTO members.[21] In that docket, the FCC thus proposed to modify Section 64.1002 of its Rules, and to presume that alternative settlement arrangements for landing U.S. international telephone traffic, including exclusive arrangements, are in the public interest where the carriers involved are from WTO countries and lack market power.

More importantly, so far as international MSS offerings are concerned, last year the Commission adopted a landmark order "declin[ing] ... to apply the requirements of our ISP [International Settlement Policy] to the global mobile satellite services (MSS) industry."[22] In view of this decision, just nine months ago, the FCC has presented no compelling rationale for reimposing portions of the ISP on the MSS industry by virtue of new rules barring "exclusionary" arrangements. At a minimum, therefore, the FCC should clarify any rule adopted in this docket and make it consistent with its actions in CC Docket No. 90-337, Phase II and IB Docket No. 94-142.

---

[21] See Rules and Policies on Foreign Participation in the U.S. Telecommunications Market, IB Docket No. 97-142, Order and Notice of Proposed Rulemaking, FCC 97-195 (rel. June 4, 1997) (Foreign Participation Notice), ¶ 152.

[22] Flexibility Order ¶ 4. It is TMI's view that this ruling also covers regional MSS systems, such as MSAT-1, but the company has asked the agency to clarify this point. See TMI's "Petition For Partial Reconsideration And/Or Clarification", CC Docket No. 90-337, Phase II, filed March 10, 1997. TMI hereby incorporates the text of said petition in this docket by reference.

It is TMI's view that the preferable course, both as a matter of policy and law, is not to adopt a general rule regarding the business arrangements made by non-U.S. satellites for handling telecommunications traffic. In addition to the public interest reasons mentioned above, any such rule would violate the MFN and National Treatment provisions of the GATS because most U.S.-satellite licensees, including AMSC, are not subject to such a rule.

In these circumstances, TMI submits that the prudent course is to review the anti-competitive impact, if any, of any "exclusionary arrangement" which may be established by a non-U.S. satellite operator on a case-by-case basis. The FCC's existing complaint process, and its policies barring anti-competitive practices, provide sufficient regulatory safeguards to deter arrangements which may substantially impair competition for U.S. satellite services.

II. The GATS National Treatment Provisions Require The Deregulation of Receive-Only Earth Stations Used To Receive "Covered" Services From TMI's Satellite And Like Services From Other MSS Systems Licensed By WTO Countries

TMI supports the FCC's tentative conclusion that the licensing of receive-only earth stations used to receive services covered by the United States' Schedule of Commitments would be inconsistent with the country's National Treatment obligations under the GATS. Section 25.131(j) of the Rules should be amended accordingly to provide, inter alia, that "receive-only earth stations used to receive a telecommunication service from a non-U.S. satellite licensed by a WTO member country, and not a direct-to-home Fixed Satellite Service (FSS), a Direct Broadcast Satellite Service (DBS), or a Digital Audio Radio Service (DARS), need not file for licenses." This new text should be inserted in place of the amended rule Section 25.131(j) contained in Appendix B to the DISCO II Further Notice.

The DISCO II Further Notice observes that "[b]ecause receive-only earth stations are passive and cannot cause interference to other radio stations, [the FCC] eliminated, over ten years ago, the license requirement for receive-only stations operating with domestic U.S. satellites."[23] At the same time, the FCC continued to require licenses for certain receive-only terminals receiving transmissions from space stations in the FSS, or from other satellites where the service originated in another country.[24] Hence, receive-only terminals currently used to receive satellite paging service (i.e., data messages) from a U.S.-licensed space stations a Fixed or Mobile service (e.g., a GE Americom, AMSC, or ORBCOMM satellite) need not be licensed. Nor, to our knowledge, are licenses required for the hand-held receive-only terminals used to obtain data from the satellite Global Positioning System (GPS).

After January 1, 1998, however, the U.S. likely will be subject to the GATS, which, among other things, precludes the FCC from treating U.S. satellite operators providing a covered service more favorably than non-U.S. operators providing the same covered service.[25] In light

---

[23] Id. at ¶ 56.

[24] See 47 C.F.R. § 25.131(j). However, in a proceeding to amend Section 25.131 of the Rules, see Notice of Proposed Rulemaking, 8 FCC Rcd 1720 (1993), the FCC proposed to deregulate all FSS receive-only stations "whether these stations are used at fixed locations or used in motion on aircraft or any other transportable platform." Id. at 1723 (emphasis added). Because mobile FSS terminals have no fixed location, the agency also proposed to forego voluntary registration for such terminals. Id. at 1722 n. 19.

[25] For example, the GATS National Treatment provision provides that "each Member [of the WTO] shall accord to services and service suppliers of any other Member ... treatment no less favourable than it accords to its own like services and service suppliers." GATS, Article XVII(1). Section 3 of GATS Article XVII makes it clear that the purpose of this National Treatment obligation is to prevent a country from placing a foreign service provider at a competitive disadvantage. It thus states that "[f]ormally different treatment should be considered to be less favourable if it modifies the conditions of competition in favour of services or service

of America's WTO commitments, the Further Notice asks whether the licensing approach advanced in the original DISCO II Notice "should still be adopted."[26] TMI's answer is "No."

Deregulation of the receive-only terminals used to receive covered services from non-U.S. satellites would advance the agency's stated telecom policy goals, especially where receive-only mobile terminals (ROMETs) are concerned. First, deregulating ROMETs used in conjunction with any WTO licensed MSS operator, such as TMI, would spur additional competition. Without the licensing hurdle to cross, regional MSS operators, other than AMSC, would have the immediate ability to introduce new and innovative satellite messaging and data service for U.S. consumers.

Second, deregulating ROMETs would end the discriminatory treatment of these terminals vis-a-vis terminals used to receive like messaging services from terrestrial transmitters. As TMI stated in its initial comments, one-way (i.e., receive only) terminals for paging and similar message services are not licensed by the Commission. Such terminals are treated the same as Customer Premises Equipment (CPE), and may be freely distributed and used, provided the terminals meet the FCC's type certification requirements. This is so even though the terminals may be used to receive messages from non-U.S. sources (e.g., via a foreign wireline connection to a local U.S. paging transmitter). There is no public interest rationale for imposing a greater regulatory burden on the manufacturers, users or distributors of ROMETs.[27]

---

suppliers of the Member compared to like services or service suppliers of any other Member."

[26] DISCO II Further Notice ¶ 57.

[27] Thus, deregulation also arguably is required by the forbearance provisions (Section 401) of the Telecommunications Act of 1996. See, e.g., TMI Comments, July 25, 1996, at 21-

Third, as the DISCO II Further Notice implies, the National Treatment provisions of the GATS oblige the FCC to deregulate receive only terminals used to receive covered services from non-U.S. satellites so long as no license is required for such terminals to receive the same services from U.S. licensed satellites.

The FCC's concerns about policing prohibited uses of receive-only terminals are groundless, especially where ROMETs are concerned. The satellite messaging terminals which TMI currently serves in Canada are frequency (L-band) and service-specific. They could not be used to receive DTH or DARS communications, and, to our knowledge, there are no receive-only MSS terminals in the market that would readily permit a customer to receive both covered and non-covered services from an MSS or FSS system. Any enforcement problems associated with the deregulation of ROMETs thus are likely to be de minimis.

However, if the FCC has continuing concerns regarding the use of unlicensed terminals for DBS or other non-covered services, the agency's rules (Parts 2 and 15) applicable to the marketing and sale of passive receivers could be amended accordingly. For example, henceforth, any party seeking Part 15 compliance for a receive-only terminal could be required to certify that the terminal is not intended for receipt of a prohibited service from a non-U.S. satellite. In addition, as with other FCC rule violations, persons using an unlicensed terminal to receive a non-covered service would risk enforcement action under Title V of the Communications Act of 1934, as amended.[28]

22.

[28] See 47 U.S.C. § 501 et seq.

III. Conclusion

The FCC should adopt the revised market entry policies for non-U.S. licensed satellites stated in the DISCO II Further Notice with certain modifications to ensure that the agency's new rules actually expedite competition between U.S. and Canadian regional MSS systems and increase consumer choice.

The FCC thus should: (1) confirm that, upon adoption of the new rules, access to regional MSS systems licensed in WTO countries will be presumed to be in the public interest; (2) adopt a further presumption that no spectrum considerations need to be reviewed in connection with a request to access a non-U.S. MSS system which has completed the international coordination process; (3) clarify the additional Part 25 requirements, if any, which would apply to TMI service in the U.S.; and (4) state that it will address any anti-competitive impact which may arise from the foreign service arrangements of non-U.S. satellites on a case-by-case basis, rather than by extending the scope of Section 25.143(h) of the Rules or adopting a similar rule of general application.

Finally, the FCC should deregulate the use of receive only earth stations which receive "covered" services from non-U.S. MSS systems licensed by a WTO member country. Continued licensing of such terminals would be anticompetitive and violate the GATS National Treatment provisions.

Respectfully submitted,

TMI COMMUNICATIONS AND COMPANY,
LIMITED PARTNERSHIP

By _____

Gregory C. Staple
Koteen & Naftalin, L.L.P.
1150 Connecticut Avenue, N.W.
Suite 1000
Washington, D.C. 20036
(202) 467-5700

Its Attorneys

August 21, 1997

CERTIFICATE OF SERVICE

I, Barbara Frank, a secretary in the law firm of Koteen & Naftalin, L.L.P., do hereby certify that copies of the foregoing "SUPPLEMENTAL COMMENTS OF TMI COMMUNICATIONS AND COMPANY, LIMITED PARTNERSHIP" were served by First Class United States mail, postage prepaid, on this 21st day of August, 1997 to the following:

* Tom Tycz
Division Chief
Satellite and Radiocommunication Division
International Bureau
Federal Communications Commission
2000 M Street, N.W.
Room 800
Washington, D.C. 20554

* Cecily D. Holiday
Deputy Chief
Satellite and Radiocommunication Division
International Bureau
Federal Communications Commission
2000 M Street, N.W.
Room 800
Washington, D.C. 20554

* Fern J. Jarmulnek
Chief, Satellite Policy Branch
Satellite and Radiocommunication Division
International Bureau
Federal Communications Commission
2000 M Street, N.W.
Room 800
Washington, D.C. 20554

* Dorothy Conway
Federal Communications Commission
1919 M Street, N.W.
Room 234
Washington, D.C. 20554

Timothy Fain
Office of Management and Budget
Desk Officer
10236 NEOB
725 17th Street, N.W.
Washington, D.C. 20503

Robert S. Koppel, Esq.
Tally Frenkel, Esquire
WorldCom, Inc.
15245 Shady Grove Road
Suite 460
Rockville, MD 20850

Richard E. Wiley, Esq.
John C. Quale, Esq.
Stacy R. Robinson, Esq.
Bruce A. Olcott, Esq.
Wiley, Rein & Fielding
1776 K Street, N.W.
Washington, D.C. 20006

Norman P. Leventhal, Esq.
Raul R. Rodriguez, Esq.
Stephen D. Baruch, Esq.
Walter P. Jacob, Esq.
Leventhal, Senter & Lerman
2000 K Street, N.W.
Suite 600
Washington, D.C. 20006

Scott Blake Harris, Esq.
Mark A. Grannis, Esq.
Gibson, Dunn & Crutcher, LLP
1050 Connecticut Avenue, N.W.
Washington, D.C. 20036

Thomas J. Keller, Esq.
Eric T. Werner, Esq.
Verner, Liipfert, Bernhard, McPherson
and Hand, Chartered
901 15th Street, N.W.
Suite 700
Washington, D.C. 20005-2301

Richard H. Shay, Esq.
April McCalin-Delaney, Esq.
Orion Network Systems, Inc.
2440 Research Blvd.
Suite 400
Rockville, MD 20850

Terri B. Natoli, Esq.
Fleischman and Walsh, L.L.P.
1400 Sixteenth Street, N.W.
Suite 600
Washington, D.C. 20005

Albert Halprin, Esq.
Halprin, Temple, Goodman & Sugrue
Suite 650 East Tower
1100 New York Avenue, N.W.
Washington, D.C. 20036

Philip L. Malet, Esq.
Alfred M. Mamlet, Esq.
Maury D. Shenk, Esq.
Steptoe & Johnson LLP
1330 Connecticut Avenue, N.W.
Washington, D.C. 20036

Michael D. Kennedy
Vice President and Director
Regulatory Relations
Barry Lambergman, Manager
Satellite Regulatory Affairs
Motorola, Inc.
1350 I Street, N.W.
Suite 400
Washington, D.C. 20005

F. Thomas Tuttle, Vice President and
General Counsel
Patricia A. Mahoney, Senior Counsel
Regulatory Matters
Iridium, Inc.
Eighth Floor
1401 H Street, N.W.
Washington, D.C. 20005

Carol R. Schultz, Esq.
Larry a. Blosser, Esq.
MCI Telecommunications Corporation
1801 Pennsylvania Avenue, N.W.
Washington, D.C. 20006

Debra A. Smiley-Weiner, Esq.
Deputy General Counsel
Lockheed Martin Astro Space Commercial
P.O. Box 800
Princeton, NJ 08543-0800

Gerald Musarra
Senior Director, Commercial Programs
Space and Strategic Missiles Sector
Lockheed Martin Corporation
1725 Jefferson Davis Highway
Arlington, VA 22202-4127

William D. Wallace, Esquire
Crowell & Moring
1001 Pennsylvania Avenue, N.W.
Washington, D.C. 20004

Philip L. Verveer, Esq.
Michele Pistone, Esq.
Wilkie Farr & Gallagher
1155 21st Street, N.W.
Suite 600
Washington, D.C. 20036

William F. Adler
Vice President & Division Counsel
Globalstar
3200 Zanker Road
San Jose, CA 95134

Yasuharu Iwashima
Executive Vice President
Japan Satellite Systems, Inc.
5th Floor Tranomon 17 Mori Bldg.
1-26-5 Tranomon Minato-ku
Tokyo
105 Japan

Henry M. Rivera, Esq.
Darren L. Nunn, Esq.
Ginsberg Feldman and Bress, Chtd.
1250 Connecticut Avenue, N.W.
Washington, D.C. 20036

Donald D. Wear, Jr., Esq.
Vice President/General Counsel
Intelsat
3400 International Drive, N.W.
Washington, D.C. 20008

Cheryl A. Tritt, Esquire
Susan H. Crandall, Esq.
Stephen J. Kim, Esq.
Morrison & Foerster, LLP
2000 Pennsylvania Avenue, N.W.
Suite 5500
Washington, D.C. 20006

Benjamin J. Griffin, Esq.
Kathleen A. Kirby, Esq.
Reed Smith Shaw & McClay
1301 K Street, N.W.
Suite 1100, East Tower
Washington, D.C. 20005

Christine G. Crafton, Ph.D.
Director, Industry Affairs
General Instrument Corporation
1133 21st Street, N.W.
Suite 405
Washington, D.C. 20036

Peter A. Rohrbach, Esq.
Karis A. Hastings, Esq.
Hogan & Hartson, L.L.P.
555 Thirteenth Street, N.W.
Washington, D.C. 20004

Philip V. Otero, Esq.
Vice President & General Counsel
Ge American Communications, Inc.
Four Research Way
Princeton, NJ 08540

Gary M. Epstein, Esq.
John P. Janka, Esq.
Teresa D. Baer, Esq.
Latham & Watkins
1001 Pennsylvania Avenue, N.W.
Washington, D.C. 20004-2505

Howard D. Polsky, Esq.
Keith H. Fagan, Esq.
Neal T. Kilminster, Esq.
Nancy J. Thompson, Esq.
Comsat Corporation
6560 Rock Spring Drive
Bethesda, MD 20817

Richard E. Wiley, Esq.
Lawrence W. Secrest, III, Esq.
William B. Baker, Esq.
Rosemary C. Harold, Esq.
Wiley, Rein & Fielding
1776 K Street, N.W.
Washington, D.C. 20006

Raul R. Rodriguez, Esq.
Stephen D. Baruch, Esq.
David S. Keir, Esq.
Leventhal, Senter & Lerman
2000 K Street, N.W.
Suite 600
Washington, D.C. 20006

Randolph J. May, Esq.
Timothy J. Cooney, Esq.
Suttherland, Asbill & Brennan
1275 Pennsylvania Avenue, N.W.
Washington, D.C. 20004-2404

Charlene Vanlier, Esq.
Capital Cities/ABC, Inc.
21 Dupont Circle, N.W.
6th Floor
Washington, D.C. 20036

Mark W. Johnson, Esq.
CBS, Inc.
600 New Hampshire Avenue, N.W.
Suite 1200
Washington, D.C. 20037

Diane Zipursky, Esq.
National Broadcasting Company, Inc.
1299 Pennsylvania Avenue, N.W.
11th Floor
Washington, D.C. 20004

Bertram W. Carp, Esq.
Turner Broadcasting System, Inc.
820 First Street, N.E.
Suite 956
Washington, D.C. 20002

Joel S. Winnik, Esq.
K. Michele Walters, Esq.
Hogan & Hartson L.L.P.
555 Thirteenth Street, N.W.
Washington, D.C. 20004-1109

Joan W. Griffin, Esq.
Cheryl Lynn Schneider, Esq.
BT North America Inc.
601 Pennsylvania Avenue, N.W.
Suite 725
Washington, D.C. 20004

Mark C. Rosenblum, Esq.
Peter H. Jacoby, Esq.
Judy Sello, Esq.
AT&T Corp.
295 North Maple Avenue
Room 3244J1
Basking Ridge, NJ 07920

Bruce D. Jacobs, Esq.
Glenn D. Richards, Esq.
Robert L. Galbreath, Esq.
Fisher Wayland Cooper Leader &
Zaragoza L.L.P.
2001 Pennsylvania Avenue, N.W.
Suite 400
Washington, D.C. 20036

Michael J. Lehmkul, Esq.
Alphastar Television Network Inc.
Pepper & Corazzini, L.L.P.
1776 K Street, N.W.
Suite 200
Washington, D.C. 20006